Filed 12/27/13 In re Pedro C. CA5

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

In re PEDRO C., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. PEDRO C., Defendant and Appellant.	F066772 (Super. Ct. No. 13CEJ600050-1) **OPINION**

THE COURT[*]

APPEAL from a judgment of the Superior Court of Fresno County. Kimberly A. Gaab, Judge.

Jyoti Malik, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Stephen G. Herndon and Harry Joseph Colombo, Deputy Attorneys General, for Plaintiff and Respondent.

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[*] Before Gomes, Acting P.J., Kane, J. and Detjen, J.

Following the denial of his motion to suppress evidence, minor Pedro C. admitted carrying a concealed dagger. On appeal, he contends the juvenile court erred in denying his motion to suppress because the evidence was produced from an illegal detention. We affirm.

PROCEDURAL AND FACTUAL BACKGROUND

On January 15, 2013, the Fresno County District Attorney filed a petition pursuant to Welfare and Institutions Code section 602, subdivision (a), alleging that Pedro C. had been in possession of a concealed dagger (Pen. Code, § 21310).

Pedro C. filed a motion to suppress evidence (Welf. & Inst. Code, § 700.1). At the suppression hearing, a Fresno police officer testified as follows:

On January 12, 2013, the uniformed officer was part of the South Bureau Impact Team, conducting proactive patrol in gang neighborhoods and drug-infested neighborhoods. That evening, at about 7:00 p.m., it was dark outside. The officer was patrolling alone in a patrol vehicle through a residential neighborhood that he knew well and had patrolled often. As he was stopped at an intersection, he noticed two Hispanic juvenile males, one of whom was Pedro C., walking on the sidewalk about 40 feet away. They did not appear to be talking until they saw the officer in the patrol vehicle. The officer observed them look over at him and talk to each other. He could see their mouths moving and then they both turned their heads and looked at the officer.

The officer shone his vehicle's spotlight on the two males. At this point, Pedro C. walked behind the other male and put his right hand in his right pants pocket. It appeared to the officer that Pedro C. was trying to conceal his actions. After 15 or 20 seconds, he removed his hand from his pocket and immediately put it down the front of his pants into the crotch area. (Before Pedro C. put his hand in his pocket, his hands were at his sides and did not appear to be holding anything.) The officer thought Pedro C. had removed something from his pocket and was trying to conceal it in the crotch of his pants.

At this point, the officer believed criminal activity might be afoot due to Pedro C.'s furtive action, the amount of drug activity in the neighborhood, and the drug arrests the officer had made in that neighborhood.

The officer turned the corner and stopped his vehicle about 25 or 30 feet from the males, who were still on the sidewalk across the street. The spotlight remained on them. The officer was concerned that Pedro C. was either attempting to hide narcotics or conceal a weapon, so the officer told Pedro C. to take his hand out of his pants. Pedro C. answered, "For what?" He added, "I got to piss." The officer again told him to take his hand out, but Pedro C. repeated, "For what?" As Pedro C. said this, he walked out into the street toward the officer's vehicle. The officer had not asked him to approach. Pedro C. was closing the distance between them and the officer was concerned he was hiding a weapon and was going to assault him with it. Pedro C. continued to approach the vehicle and the officer took his behavior as a threat. The officer was aware that people in that neighborhood often carried knives and firearms for both offensive and defensive purposes. The officer exited his vehicle when Pedro C. was about 10 feet away and grabbed Pedro C.'s hands so he could pat search him for weapons. He put Pedro C.'s hands on top of his head with his fingers interlaced. As the officer held Pedro C.'s hands with one hand, he used the other to pat down on the outside of Pedro C.'s clothing for any concealed weapons. In Pedro C.'s right pocket, the officer felt a hard metal object with a pointed end. He believed it was a concealed knife, so he reached inside the pocket and removed the object. It was a metal knife with a fixed blade. The officer handcuffed Pedro C. and arrested him for carrying a concealed dagger. The officer had not displayed any weapons. While this was occurring, the other male remained standing on the sidewalk.

After hearing this testimony and the argument of counsel, the juvenile court found that the initial encounter when the officer shone the spotlight on Pedro C. and asked him to remove his hand from his pants was a consensual encounter. And when Pedro C.

walked toward the officer with his hand in his pants, twice refusing to remove it, the officer was justified in conducting a pat down search for weapons for his own safety. The court denied the motion to suppress.

Pedro C. withdrew his denial and admitted the allegation. The court sustained the petition and deemed it a misdemeanor. The court adjudged Pedro C. a ward of the court and ordered him to perform community service and pay a fine.

DISCUSSION

Pedro C. contends the officer's actions constituted a clear show of authority sufficient to cause any reasonable person to feel detained. Pedro C. argues he "was detained once the uniformed officer shined a bright light on him and his companion, moved his clearly marked patrol vehicle closer to the two individuals, and in a loud and non-conversational tone asked that [Pedro C.] remove his hand from his pants the first time." This detention, Pedro C. asserts, was not based on reasonable suspicion or probable cause and therefore the detention was illegal and the knife found in the subsequent search should have been suppressed.

"In ruling on a motion to suppress, the trial court must find the historical facts, select the rule of law, and apply the rule to the facts in order to determine whether the law as applied has been violated. [Citation.] We review the trial court's resolution of the factual inquiry under the deferential substantial evidence standard. [Citation.] Selection of the applicable law is a mixed question of law and fact that is subject to independent review. [Citation.]" (*People v. Gonzales and Soliz* (2011) 52 Cal.4th 254, 284.)

I. Law

The Fourth Amendment protects individuals against unreasonable searches and seizures. (*People v. Robles* (2000) 23 Cal.4th 789, 794.) Police contacts with individuals fall into three general categories: consensual encounters, which do not involve any restraint and require no justification; detentions of limited duration, scope, and purpose, which require reasonable, articulable suspicion the individual was or will be involved in

criminal activity; and formal arrests (or comparable restraints on a person's liberty), requiring probable cause to believe the person has committed a crime. (*People v. Hughes* (2002) 27 Cal.4th 287, 327-328; *In re Manuel G.* (1997) 16 Cal.4th 805, 821; *Florida v. Royer* (1983) 460 U.S. 491, 497-498.)

"[A] consensual encounter between a police officer and an individual does not implicate the Fourth Amendment. It is well established that law enforcement officers may approach someone on the street or in another public place and converse if the person is willing to do so. There is no Fourth Amendment violation as long as circumstances are such that a reasonable person would feel free to leave or end the encounter. [Citations.]" (*People v. Rivera* (2007) 41 Cal.4th 304, 309.) "[E]ven when officers have no basis for suspecting a particular individual, they may generally ask questions of that individual, [citations]; ask to examine the individual's identification, [citations]; and request consent to search his or her luggage, [citation]—as long as the police do not convey a message that compliance with their requests is required." (*Florida v. Bostick* (1991) 501 U.S. 429, 434-435.) An officer may ask about the contents of a person's pockets, ask for identification, and even ask the person to submit to a search. In determining whether compliance was voluntary, the manner or mode of the request is considered. (*People v. Franklin* (1987) 192 Cal.App.3d 935, 941.) "[A] seizure does not occur simply because a police officer approaches an individual and asks a few questions. So long as a reasonable person would feel free 'to disregard the police and go about his business,' [citation], the encounter is consensual and no reasonable suspicion is required. The encounter will not trigger Fourth Amendment scrutiny unless it loses its consensual nature." (*Florida v. Bostick*, at p. 434.)

"'[A]n initially consensual encounter … can be transformed into a seizure or detention within the meaning of the Fourth Amendment.' [Citations.]" (*Kaupp v. Texas* (2003) 538 U.S. 626, 632.) "Unlike a consensual encounter, a detention is a seizure within the meaning of the Fourth Amendment of the United States Constitution ….

[Citations.]" (*People v. Mendoza* (2011) 52 Cal.4th 1056, 1081.) "'A seizure occurs whenever a police officer "by means of physical force or show of authority" restrains the liberty of a person to walk away.' [Citation.] Whether a seizure has taken place is to be determined by an objective test, which asks 'not whether the citizen perceived that he was being ordered to restrict his movement, but whether the officer's words and actions would have conveyed that to a reasonable person.' [Citation.] Thus, when police engage in conduct that would 'communicate[ ] to a reasonable person that he was not at liberty to ignore the police presence and go about his business,' there has been a seizure. [Citations.]" (*People v. Celis* (2004) 33 Cal.4th 667, 673.)

An officer's use of a police spotlight does not necessarily create a detention, but it may if combined with additional overt acts that together amount to a show of authority sufficient to constitute a detention. In *People v. Perez* (1989) 211 Cal.App.3d 1492, an officer was on patrol in the early evening when he saw two people in an unlit vehicle in a dark corner of a motel parking lot. (*Id.* at p. 1494.) The officer parked his patrol car "head on with defendant's vehicle, although he left plenty of room for defendant to drive away. The officer activated the high beams as well as the spotlights on both sides of the patrol car in order to get a better look at the occupants and gauge their reactions. He did not, however, turn on the emergency lights." (*Ibid.*) The officer exited the patrol car, walked to the driver's side of the defendant's vehicle, and asked the defendant to roll down the window. (*Ibid.*) At that point, the officer smelled marijuana and had reasonable suspicion to at least detain the defendant and investigate further. (*Id.* at p. 1496.) Regarding the initial approach, the court concluded that no detention had taken place. (*Ibid.*) The officer did not block in the defendant's car and did not activate his emergency lights. (*Ibid.*) The court stated: "While the use of high beams and spotlights might cause a reasonable person to feel himself the object of official scrutiny, such directed scrutiny does not amount to a detention." (*Ibid.*; see also *People v. Franklin, supra,* 192 Cal.App.3d at pp. 938, 940 [officer's use of spotlight alone was not sufficient

show of authority to be detention, and immediate act of pulling patrol car to the curb behind the defendant was not an additional overt act sufficient to convince a reasonable man he was not free to leave]; *People v. Rico* (1979) 97 Cal.App.3d 124, 128-129, 130 [officer's use of spotlight to get better look at occupants of car on freeway not detention]; cf. *People v. McKelvy* (1972) 23 Cal.App.3d 1027, 1032, 1034 [the defendant was in spotlight and surrounded by four officers armed with shotguns or carbines; "no matter how politely the officer may have phrased his request for the object [in the defendant's pocket], it is apparent that defendant's compliance was in fact under compulsion of a direct command by the officer"]; *People v. Roth* (1990) 219 Cal.App.3d 211, 213, 215 [officer's use of spotlight and command to approach while standing behind the car door would convey to a reasonable person that he was not free to leave]; *People v. Garry* (2007) 156 Cal.App.4th 1100, 1103-1104, 1111 [officer's use of spotlight and action of walking briskly toward the defendant, who walked backward nervously while claiming he lived at the adjacent residence, and asking about the defendant's legal status would be intimidating to a reasonable person].)

But if the officer's use of the spotlight provides "'some objective manifestation' that criminal activity is afoot and that the person … is engaged in that activity," the officer may detain the person to investigate possible criminal activity. (*People v. Souza* (1994) 9 Cal.4th 224, 230.) And if the officer believes that the detained person may be armed and dangerous, the officer may conduct a pat search—"a carefully limited search of the outer clothing of such persons in an attempt to discover weapons which might be used to assault him." (*Terry v. Ohio* (1968) 392 U.S. 1, 30 (*Terry*).) "The purpose of this limited search is not to discover evidence of crime, but to allow the officer to pursue his investigation without fear of violence …." (*Adams v. Williams* (1972) 407 U.S. 143, 146.) To justify a pat search for weapons, the officer need not have probable cause to arrest the individual nor "be absolutely certain that the individual is armed; the issue is whether a reasonably prudent man in the circumstances would be warranted in the belief

that his safety or that of others was in danger." (*Terry,* at p. 27.) The officer's reasonable suspicion must be directed at the individual to be searched (*Ybarra v. Illinois* (1979) 444 U.S. 85, 95) and must be based on specific, articulable facts (*Terry,* at p. 21). As with an investigatory detention, the determination whether an officer had reasonable suspicion to conduct a pat search for weapons is based on the totality of the circumstances. (*People v. Avila* (1997) 58 Cal.App.4th 1069, 1074.)

II. Analysis

In this case, the officer's use of the spotlight subjected Pedro C. and his companion to official scrutiny, but it did not constitute a detention. The officer turned on the spotlight when he was about 40 feet away and he stopped the vehicle when he was 25 or 30 feet away. The officer did not make an overt show of authority that amounted to a detention.

Once Pedro C. was subjected to that scrutiny, his furtive actions, in addition to his presence in a neighborhood infested with gangs, drugs, and weapons, provided a reasonable and articulable suspicion that he was committing a crime—concealing either drugs or a weapon. At this point, the officer was justified in detaining Pedro C. to investigate.

Obviously, Pedro C.'s aggressive behavior in moving toward the officer while still refusing to remove his hand from his pants heightened the urgency and required that the officer physically detain Pedro C. to thwart what a reasonable person would believe was an imminent attack by an armed person. The totality of the circumstances provided a reasonable suspicion that Pedro C. was armed and dangerous. After Pedro C. was detained, the officer was justified in conducting a pat search for weapons for his own safety.

We conclude the juvenile court did not err in denying the motion to suppress evidence of the knife.

DISPOSITION

The order is affirmed.